

Amendment No. 1 to HB0261

Hill T
Signature of Sponsor

AMEND Senate Bill No. 196*

House Bill No. 261

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 4-5-501, is amended by deleting the section and substituting the following:

As used in this part:

(1) "Affected person" means a licensee, an applicant for a license who has applied for a license within the previous one hundred eighty (180) days, or any person who would otherwise be an applicant for a license but cannot apply due to an entry regulation;

(2) "Effectively served by restrictions that allow greater private participation" means that the legitimate public health or safety concern could be substantially addressed by a less onerous restriction on entry in the marketplace, including alternative forms, such as market competition, industry or consumer-related ratings and reviews, private or government certification, a specific private civil cause of action to remedy consumer harm, a deceptive trade practice act, a regulation of the process of providing the specific goods or services to consumers, prohibitions on individual malfeasants, existing consumer protection laws, inspections, bonding or insurance, registration, or similar means;

(3) "Entry regulation":

(A) Means any rule, policy, or practice promulgated, established, adopted, or implemented by a licensing authority prescribing qualifications or requirements for a person's entry into, or continued

Amendment No. 1 to HB0261

Hill T
Signature of Sponsor

AMEND Senate Bill No. 196*

House Bill No. 261

participation in, any business, trade, profession, or occupation in this state, or any statute prescribing qualifications or requirements for a person's entry into, or continued participation in, any business, trade, profession, or occupation in this state; and

(B) Does not include a rule, policy, practice, or statute as described in subdivision (3)(A) that is explicitly required by federal law;

(4) "Health or safety":

(A) Means protection of members of the public against harm, to be narrowly construed; and

(B) Does not:

(i) Encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition;

(ii) Include general welfare or fraud, because other adequate consumer safeguards exist to address those matters; and

(iii) Include general competency except when the entry regulation is the least onerous way to exclude gross negligence in the performance of the business, trade, profession, or occupation;

(5) "License" means a license, certificate, registration, certification, permit, or other similar document for the purpose of entry into, or regulation of, any business, trade, profession, or occupation in this state;

(6) "Licensee" means a person with a current license; and

(7) "Licensing authority":

(A) Means any state agency, regulatory board, commission, council, or committee in the executive branch of state government established by statute or rule that issues a license; and

(B) Does not include any state agency, regulatory board, commission, council, or committee that regulates a person under title 38; title 41; title 45; title 47, chapter 30; title 48; title 49; title 56; title 62, chapter 1; title 63; or title 68, chapter 11 or chapter 140.

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 5, Part 5, is amended by adding the following as new sections:

4-5-503.

(a) All entry regulations must genuinely fulfill a legitimate public health or safety objective that cannot be effectively served by restrictions that allow greater private participation.

(b) All rules promulgated by a licensing authority must include language certifying compliance with this section.

(c) This section does not prevent a licensing authority from promulgating rules unrelated to entry regulations intended to prevent fraud in the actual practice of a business, trade, profession, or occupation.

4-5-504.

(a) An affected person may petition a licensing authority to repeal or modify an entry regulation within the licensing authority's jurisdiction, including entry regulations promulgated relative to a statute. Within one hundred twenty (120) days of a petition filed under this subsection (a), the licensing authority shall:

(1) Grant limited, probationary, or restricted licenses to persons whose past individual conduct warrants oversight;

(2) Begin the process of repealing the entry regulation and continue the repeal process until the entry regulation is repealed;

(3) Begin the process of modifying the entry regulation and continue the modification process until the entry regulation achieves the standard set forth in § 4-5-503;

(4) Report the entry regulation and the effect of the entry regulation on the affected person to the chairs of the joint government operations committee if the licensing authority determines that the entry regulation does not comply with § 4-5-503 and requires legislative action to repeal or modify the entry regulation; or

(5) State in writing to the affected person the basis on which the licensing authority concludes that the entry regulation conforms to the standard set forth in § 4-5-503 and report that decision in writing to the chairs of the joint government operations committee.

(b) An affected person may petition a licensing authority to determine if a statute within the licensing authority's jurisdiction complies with § 4-5-503. Within one hundred twenty (120) days of a petition filed under this subsection (b), the licensing authority shall:

(1) Report the statute and the effect of the statute on the affected person to the chairs of the joint government operations committee if the licensing authority determines that the statute does not comply with § 4-5-503 and requires legislative action to repeal or modify the statute; or

(2) State in writing to the affected person the basis on which the licensing authority concludes that the statute conforms to the standard set forth in § 4-5-

503 and report that decision in writing to the chairs of the joint government operations committee.

(c) At any point during the period when the licensing authority is considering the petition, the commissioner of commerce and insurance or the commissioner's designee has the authority to grant the license with or without reasonable conditions.

(d) The governor may remove a licensing authority board member who the governor has the authority to appoint and who makes decisions that are anti-competitive and not in keeping with the goals of expanding the ability of persons within this state to practice the persons' business, trade, profession, or occupation without unnecessary restriction and regulation. The governor shall report any removal made pursuant to this subsection (d) to the chairs of the joint government operations committee.

4-5-505.

(a) After one hundred twenty (120) days following a petition filed pursuant to § 4-5-504, the person filing a petition challenging an entry regulation has a cause of action under existing § 1-3-121 to challenge its legality. A petition made pursuant to this section is subject to the following limitations:

(1) Venue exists in the court nearest to the place of residence of the person filing the petition or, alternatively, at the person's discretion, in the chancery court of Davidson County;

(2) The named defendant in a cause of action brought under this section is the licensing authority and not the named individuals who enacted or who enforced the entry regulation or statute;

(3) If requested by the person filing the petition within thirty (30) days after filing the petition, the court must hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required in this section. The person filing the petition has a right to discovery as

set forth in the Tennessee Rules of Civil Procedure. If the person exercises the right to discovery, then the court must hold the evidentiary hearing within thirty (30) days following completion of discovery as ordered by the court. The court may hear testimony from witnesses, compel production of documents, and admit relevant admissible evidence that was not considered by the licensing authority; and

(4) In any proceeding under this section, the court shall decide all questions of law, including the interpretation of an entry regulation adopted by a licensing authority or a statute, without deference to any previous determination that may have been made on the question by the licensing authority.

(b) With respect to the challenge of an entry regulation, the plaintiff prevails if the court finds by a preponderance of evidence that the challenged entry regulation on its face or in its effect burdens the creation of a business, the entry of a business into a particular market, or entry into a business, trade, profession, or occupation, and:

(1) That the challenged entry regulation does not genuinely fulfill a legitimate public health or safety objective; or

(2) Where the challenged entry regulation is necessary to fulfill a legitimate public health or safety objective, the objective can be effectively served by restrictions that allow greater private participation.

(c) The burden of proof in any action brought under this section rests with the licensing authority at all times.

(d) Upon a finding for the plaintiff, the court shall issue a declaratory judgment and enjoin further enforcement of the challenged entry regulation.

SECTION 3. Tennessee Code Annotated, Section 1-3-121, is amended by deleting the last sentence and substituting the following:

A cause of action does not exist under this chapter to seek damages, costs, or attorney fees.

SECTION 4. For the purposes of promulgating rules, forms, and procedures and making necessary provisions for implementation of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2020, the public welfare requiring it.